

CHILD CARE INVESTIGATIONS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Parley G. Hellewell

LONG TITLE

General Description:

This bill amends the Utah Child Care Licensing Act and the Government Records Access and Management Act.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Health to provide certain information to a child care provider prior to conducting a child care investigation;
- ▶ specifies the classification of child care investigation records under the Government Records Access and Management Act in the case where the department is unable to substantiate a complaint;
- ▶ limits the disclosure of identifying information related to a child care complaint that the department is unable to substantiate;
- ▶ specifies how the Department of Health shall respond to an anonymous or confidential complaint about a child care program;
- ▶ specifies that any record related to an anonymous or confidential complaint is a protected record and limits the manner in which it may be disclosed; and
- ▶ amends the list of items designated as protected records.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **26-39-109**, as enacted by Chapter 196, Laws of Utah 1997

31 **63-2-304**, as last amended by Chapters 223, 299 and 358, Laws of Utah 2004



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **26-39-109** is amended to read:

35 **26-39-109. Investigations -- Process -- Disclosure -- Anonymous complaints.**

36 (1) The department may conduct investigations necessary to enforce the provisions of
37 this chapter.

38 (2) Prior to conducting an investigation of a child care program or residential child care
39 in response to a complaint, the department shall inform the licensee or certificate holder of:

40 (a) the name of the complainant; and

41 (b) the substance of the complaint.

42 (3) If the department is unable to substantiate a complaint, any record related to the
43 complaint or the investigation of the complaint:

44 (a) shall be classified under Title 63, Chapter 2, Government Records Access and
45 Management Act, as:

46 (i) a private or controlled record if appropriate under Sections 63-2-302 or 63-2-303; or

47 (ii) a protected record under Section 63-2-304; and

48 (b) if disclosed in accordance with Subsection 63-2-201(5)(b), may not identify an
49 individual child care program, licensee, or certificate holder.

50 (4) (a) If the department receives an anonymous or confidential complaint about a child
51 care program or residential child care, the department shall:

52 (i) use its best efforts to convince the complainant to disclose his or her identity;

53 (ii) inform the complainant that the department cannot investigate an anonymous or
54 confidential complaint;

55 (iii) solicit information from the complainant to determine whether the complaint
56 alleges actions or conditions which could pose a serious risk to the safety or well-being of a
57 child;

58 (iv) if the complainant remains anonymous and if the department determines that the

59 complaint alleges actions or conditions which could pose a serious risk to the safety or
60 well-being of a child, refer the information to the Division of Child and Family Services within
61 the Department of Human Services, law enforcement, or any other appropriate agency; and

62 (v) after referring any appropriate information under Subsection (4)(a)(iv), take no
63 further action regarding the anonymous or confidential complaint.

64 (b) The department may not investigate an anonymous or confidential complaint,
65 except as permitted by Subsection (4)(a).

66 (c) Any record of the department related to anonymous or confidential complaint is a
67 protected record under Title 63, Chapter 2, Government Records Access and Management Act,
68 and, notwithstanding Subsection 63-2-201(5)(b), may not be disclosed in a manner that
69 identifies an individual child care program, licensee, or certificate holder.

70 Section 2. Section **63-2-304** is amended to read:

71 **63-2-304. Protected records.**

72 The following records are protected if properly classified by a governmental entity:

73 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
74 has provided the governmental entity with the information specified in Section 63-2-308;

75 (2) commercial information or nonindividual financial information obtained from a
76 person if:

77 (a) disclosure of the information could reasonably be expected to result in unfair
78 competitive injury to the person submitting the information or would impair the ability of the
79 governmental entity to obtain necessary information in the future;

80 (b) the person submitting the information has a greater interest in prohibiting access
81 than the public in obtaining access; and

82 (c) the person submitting the information has provided the governmental entity with
83 the information specified in Section 63-2-308;

84 (3) commercial or financial information acquired or prepared by a governmental entity
85 to the extent that disclosure would lead to financial speculations in currencies, securities, or
86 commodities that will interfere with a planned transaction by the governmental entity or cause
87 substantial financial injury to the governmental entity or state economy;

88 (4) records the disclosure of which could cause commercial injury to, or confer a
89 competitive advantage upon a potential or actual competitor of, a commercial project entity as

90 defined in Subsection 11-13-103(4);

91 (5) test questions and answers to be used in future license, certification, registration,
92 employment, or academic examinations;

93 (6) records the disclosure of which would impair governmental procurement
94 proceedings or give an unfair advantage to any person proposing to enter into a contract or
95 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
96 of a person to see bids submitted to or by a governmental entity after bidding has closed;

97 (7) records that would identify real property or the appraisal or estimated value of real
98 or personal property, including intellectual property, under consideration for public acquisition
99 before any rights to the property are acquired unless:

100 (a) public interest in obtaining access to the information outweighs the governmental
101 entity's need to acquire the property on the best terms possible;

102 (b) the information has already been disclosed to persons not employed by or under a
103 duty of confidentiality to the entity;

104 (c) in the case of records that would identify property, potential sellers of the described
105 property have already learned of the governmental entity's plans to acquire the property;

106 (d) in the case of records that would identify the appraisal or estimated value of
107 property, the potential sellers have already learned of the governmental entity's estimated value
108 of the property; or

109 (e) the property under consideration for public acquisition is a single family residence
110 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
111 the property as required under Section 78-34-4.5;

112 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
113 compensated transaction of real or personal property including intellectual property, which, if
114 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
115 of the subject property, unless:

116 (a) the public interest in access outweighs the interests in restricting access, including
117 the governmental entity's interest in maximizing the financial benefit of the transaction; or

118 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
119 the value of the subject property have already been disclosed to persons not employed by or
120 under a duty of confidentiality to the entity;

121 (9) records created or maintained for civil, criminal, or administrative enforcement
122 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
123 release of the records:

124 (a) reasonably could be expected to interfere with investigations undertaken for
125 enforcement, discipline, licensing, certification, or registration purposes;

126 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
127 proceedings;

128 (c) would create a danger of depriving a person of a right to a fair trial or impartial
129 hearing;

130 (d) reasonably could be expected to disclose the identity of a source who is not
131 generally known outside of government and, in the case of a record compiled in the course of
132 an investigation, disclose information furnished by a source not generally known outside of
133 government if disclosure would compromise the source; or

134 (e) reasonably could be expected to disclose investigative or audit techniques,
135 procedures, policies, or orders not generally known outside of government if disclosure would
136 interfere with enforcement or audit efforts;

137 (10) records the disclosure of which would jeopardize the life or safety of an
138 individual;

139 (11) records the disclosure of which would jeopardize the security of governmental
140 property, governmental programs, or governmental recordkeeping systems from damage, theft,
141 or other appropriation or use contrary to law or public policy;

142 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
143 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
144 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

145 (13) records that, if disclosed, would reveal recommendations made to the Board of
146 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
147 Board of Pardons and Parole, or the Department of Human Services that are based on the
148 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
149 jurisdiction;

150 (14) records and audit workpapers that identify audit, collection, and operational
151 procedures and methods used by the State Tax Commission, if disclosure would interfere with

152 audits or collections;

153 (15) records of a governmental audit agency relating to an ongoing or planned audit
154 until the final audit is released;

155 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
156 litigation that are not available under the rules of discovery;

157 (17) records disclosing an attorney's work product, including the mental impressions or
158 legal theories of an attorney or other representative of a governmental entity concerning
159 litigation;

160 (18) records of communications between a governmental entity and an attorney
161 representing, retained, or employed by the governmental entity if the communications would be
162 privileged as provided in Section 78-24-8;

163 (19) personal files of a legislator, including personal correspondence to or from a
164 member of the Legislature, provided that correspondence that gives notice of legislative action
165 or policy may not be classified as protected under this section;

166 (20) (a) records in the custody or control of the Office of Legislative Research and
167 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
168 legislation or contemplated course of action before the legislator has elected to support the
169 legislation or course of action, or made the legislation or course of action public; and

170 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
171 Office of Legislative Research and General Counsel is a public document unless a legislator
172 asks that the records requesting the legislation be maintained as protected records until such
173 time as the legislator elects to make the legislation or course of action public;

174 (21) research requests from legislators to the Office of Legislative Research and
175 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
176 in response to these requests;

177 (22) drafts, unless otherwise classified as public;

178 (23) records concerning a governmental entity's strategy about collective bargaining or
179 pending litigation;

180 (24) records of investigations of loss occurrences and analyses of loss occurrences that
181 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
182 Uninsured Employers' Fund, or similar divisions in other governmental entities;

183 (25) records, other than personnel evaluations, that contain a personal recommendation
184 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
185 personal privacy, or disclosure is not in the public interest;

186 (26) records that reveal the location of historic, prehistoric, paleontological, or
187 biological resources that if known would jeopardize the security of those resources or of
188 valuable historic, scientific, educational, or cultural information;

189 (27) records of independent state agencies if the disclosure of the records would
190 conflict with the fiduciary obligations of the agency;

191 (28) records of a public institution of higher education regarding tenure evaluations,
192 appointments, applications for admissions, retention decisions, and promotions, which could be
193 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
194 Meetings, provided that records of the final decisions about tenure, appointments, retention,
195 promotions, or those students admitted, may not be classified as protected under this section;

196 (29) records of the governor's office, including budget recommendations, legislative
197 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
198 policies or contemplated courses of action before the governor has implemented or rejected
199 those policies or courses of action or made them public;

200 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
201 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
202 recommendations in these areas;

203 (31) records provided by the United States or by a government entity outside the state
204 that are given to the governmental entity with a requirement that they be managed as protected
205 records if the providing entity certifies that the record would not be subject to public disclosure
206 if retained by it;

207 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
208 except as provided in Section 52-4-7;

209 (33) records that would reveal the contents of settlement negotiations but not including
210 final settlements or empirical data to the extent that they are not otherwise exempt from
211 disclosure;

212 (34) memoranda prepared by staff and used in the decision-making process by an
213 administrative law judge, a member of the Board of Pardons and Parole, or a member of any

214 other body charged by law with performing a quasi-judicial function;

215 (35) records that would reveal negotiations regarding assistance or incentives offered
216 by or requested from a governmental entity for the purpose of encouraging a person to expand
217 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
218 person or place the governmental entity at a competitive disadvantage, but this section may not
219 be used to restrict access to a record evidencing a final contract;

220 (36) materials to which access must be limited for purposes of securing or maintaining
221 the governmental entity's proprietary protection of intellectual property rights including patents,
222 copyrights, and trade secrets;

223 (37) the name of a donor or a prospective donor to a governmental entity, including a
224 public institution of higher education, and other information concerning the donation that could
225 reasonably be expected to reveal the identity of the donor, provided that:

226 (a) the donor requests anonymity in writing;

227 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
228 classified protected by the governmental entity under this Subsection (37); and

229 (c) except for public institutions of higher education, the governmental unit to which
230 the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and
231 has no regulatory or legislative authority over the donor, a member of his immediate family, or
232 any entity owned or controlled by the donor or his immediate family;

233 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and
234 73-18-13;

235 (39) a notification of workers' compensation insurance coverage described in Section
236 34A-2-205;

237 (40) (a) the following records of a public institution of education, which have been
238 developed, discovered, or received by or on behalf of faculty, staff, employees, or students of
239 the institution:

240 (i) unpublished lecture notes;

241 (ii) unpublished research notes and data;

242 (iii) unpublished manuscripts;

243 (iv) creative works in process;

244 (v) scholarly correspondence; and

245 (vi) confidential information contained in research proposals; and
246 (b) Subsection (40)(a) may not be construed to affect the ownership of a record;
247 (41) (a) records in the custody or control of the Office of Legislative Auditor General
248 that would reveal the name of a particular legislator who requests a legislative audit prior to the
249 date that audit is completed and made public; and
250 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
251 Office of the Legislative Auditor General is a public document unless the legislator asks that
252 the records in the custody or control of the Office of Legislative Auditor General that would
253 reveal the name of a particular legislator who requests a legislative audit be maintained as
254 protected records until the audit is completed and made public;
255 (42) records that provide detail as to the location of an explosive, including a map or
256 other document that indicates the location of:
257 (a) a production facility; or
258 (b) a magazine;
259 (43) information contained in the database described in Section 62A-3-311.1;
260 (44) information contained in the Management Information System and Licensing
261 Information System described in Title 62A, Chapter 4a, Child and Family Services;
262 (45) information regarding National Guard operations or activities in support of the
263 National Guard's federal mission;
264 (46) records provided by any pawnbroker or pawnshop to a law enforcement agency in
265 compliance with Title 13, Chapter 32a, Pawnshop Transaction Information Act; ~~and~~
266 (47) information regarding food security, risk, and vulnerability assessments performed
267 by the Department of Agriculture and Food[:]; and
268 (48) as provided in Section 26-39-109:
269 (a) information or records held by the Department of Health related to a complaint
270 regarding a child care program or residential child care which the department is unable to
271 substantiate; and
272 (b) information or records related to an anonymous or confidential complaint received
273 by the Department of Health regarding a child care program or residential child care.

Legislative Review Note

as of 2-8-05 2:25 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel